

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARVELL LAVY,

Plaintiff,

v.

DENIS R. McDONOUGH, Secretary of
U.S. Department of Veterans Affairs,

Defendant.

No. 2:21-cv-1590 KJM AC PS

ORDER

Plaintiff proceeds in this action in pro per. The matter was referred to a United States Magistrate Judge as provided by Local Rule 302(c)(21).

On February 1, 2022, the magistrate judge filed findings and recommendations, which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within twenty-one days. ECF No. 14. On February 16, 2022, plaintiff filed objections to the findings and recommendations. ECF No. 15.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the recommendation is not supported by the proper analysis.

While courts may not typically “consider material beyond the pleadings in ruling on a motion to dismiss,” there are “exceptions to this rule that do not demand converting the motion to dismiss into one for summary judgment . . .” *Brode v. Fed. Aviation Admin.*, No. 19-875, 2020

1 WL 4004823, at *2 (C.D. Cal. Mar. 9, 2020) (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 688
 2 (9th Cir. 2001), *overruled on other grounds*, *Galbraith v. Cnty. of Santa Clara*, 307 F. 3d 1119,
 3 1125 (9th Cir. 2002)). “In the context of employment discrimination cases in particular, it is well
 4 established that courts may consider the administrative record of a plaintiff’s claims before
 5 the [Equal Employment Opportunity Commission (EEOC)] as judicially noticeable matters of
 6 public record.” *Lacayo v. Donahoe*, 2015 WL 993448, at *9 (N.D. Cal. Mar. 4, 2015); *see*
 7 *also Lenk v. Monolithic Power Sys. Inc.*, No. 19-03791, 2020 WL 619846, at *8 (N.D. Cal.
 8 Feb. 10, 2020) (observing that a court “may take judicial notice of [] EEOC filings or,
 9 alternatively, may consider them under the incorporation by reference doctrine”). A court may
 10 also take judicial notice of documents attached to or “properly submitted as part of the
 11 complaint.” *Lee*, 250 F.3d at 688.

12 Here, plaintiff attaches an EEOC decision to her complaint explaining that she alleged she
 13 was “subjected to discrimination and a hostile work environment based on disability (respiratory
 14 impairment and depression) and in reprisal for prior EEO activity when: 1. From December 31,
 15 2014 to May 30, 2015, management failed to provide her preferred accommodation of 100%
 16 telework for alleged environmental irritants in the workplace” Compl. at 7, ECF No. 1.
 17 Coupled with her allegation that defendant “forc[ed] disability retirement,” *id.* at 5, this “short
 18 and plain” statement, Fed. R. Civ. P. 8(a)(2), is sufficiently detailed to put defendant on notice of
 19 the facts underlying plaintiff’s claim of employment retaliation and wrongful termination under
 20 Title VII, and failure to accommodate under the ADA. Fed. R. Civ. P. 12(b)(6); *see also* Findings
 21 and Recommendations at 5–7 (outlining elements of these claims). Plaintiff need not provide any
 22 additional “detailed factual allegations” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
 23 (2007).

24 Accordingly, it is hereby ordered that defendant’s **motion to dismiss is denied** and
 25 defendant’s answer is due within twenty-one days. This matter is referred back to the assigned
 26 magistrate judge for all further pretrial proceedings.

27 DATED: July 15, 2022.

28 
 CHIEF UNITED STATES DISTRICT JUDGE